

Federal Communications Commission

DA 00-2002

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-151
Table of Allotments,) RM-9559
FM Broadcast Stations.) RM-9932
(Rangely, Silverton and)
Ridgway, Colorado)¹)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 30, 2000

Released: September 1, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 14 FCC Rcd 7184 (1999), issued in response to a petition filed by Mountain West Broadcasting ("Mountain West"), proposing the allotment of Channel 279C1 to Rangely, Colorado, as that community's first local aural transmission service. Petitioner filed supporting comments in response to the Notice. Additionally, Idaho Broadcasting Consortium, Inc. ("IBC"), permittee for Station KBNG, Channel 279C2, Silverton, Colorado, filed a counterproposal² as well as supplemental comments.

2. IBC counterproposed the substitution of Channel 279C1 for Channel 279C2 at Silverton (pop. 716),³ the reallocation of Channel 279C1 to Ridgway (pop. 423), as that community's first local aural transmission service, and modification of its authorization accordingly. Additionally, IBC requested the allotment of Channel 273A to Silverton⁴ at its currently authorized site at coordinates 37-47-36 NL and 107-38-33 WL, as a replacement for Channel 279C2, and provided the requisite commitment to apply for the Class A channel. In further support of its proposal, IBC asserts that Ridgway, a census designated place, has its own municipal services such as a United States Post Office, the Ouray County Government Road Department, as well as a police and fire department. Further, IBC advises that a town manager and town clerk oversee such administrative services for Ridgway citizens as water, sewer, public works, licensing and public records. Additionally, IBC reports that

¹ The communities of Silverton and Ridgway have been added to the caption.

² Public Notice of the counterproposal was given August 4, 2000, Report No. 2429. A corrected Public Notice was released August 10, 2000.

³ Population figures reported herein were taken from the 1990 U.S. Census.

⁴ This allotment request is short spaced to Channel 273C3, Dove Creek, Colorado (pop. 643), which was allotted to that community as its first local aural transmission service at coordinates 37-45-54 NL and 108-54-18 WL in MM Docket No. 99-203. See 14 FCC Rcd 14097 (1999). However, we have determined the availability of Channel 238A or Channel 257A as an alternate consideration for allotment at Silverton.

Ridgway residents benefit from its numerous businesses and services, including financial institutions, religious organizations, health care facilities, restaurants, lodging, a performing arts center, as well as retail establishments, and provided the names and addresses of such entities as extracted from the Ridgway Area Chamber of Commerce Business Members Directory.

3. IBC advises that the short spacing between proposed Channel 279C1 at Rangely and the requested relocation of Channel 279C1 from Silverton to Ridgway at its requested site located 12.4 kilometers (7.7 miles) NW at coordinates 38-10-13 NL and 107-53-59 WL, may be resolved by altering the proposed allocation site for Rangely to specify a site 26.3 kilometers (16.3 miles) north of the community at coordinates 40-19-02 NL and 108-51-46 WL.⁵ IBC urges that adoption of its counterproposal would result in a more efficient allotment arrangement by providing both Rangely and Ridgway with a first local aural transmission service.

Discussion

4. IBC's proposal was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). However, we must first determine whether IBC's change of community proposal would result in a preferential arrangement of allotments under our FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("Revision"), 90 FCC 2d 88 (1982),⁶ and related case precedent. See Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997). Applying those procedures, we compare the existing arrangement of allotments with the proposal using the FM allotment priorities set forth in the Revision, supra. In making our comparison, the first two priorities are not applicable in this instance. No white or gray areas are involved (priorities (1) and (2)). IBC's proposal would provide a first local service at Ridgway (pop. 423) (priority (3)). Although Silverton (pop. 716) is larger than Ridgway, our concern with the loss of the potential first local aural service at the larger community is mitigated by IBC's proposal to replace Channel 279C2 with a Class A channel at that community, for which it has stated its intention to apply. This approach will result in the preservation of a first local transmission service at Silverton as well as providing a first local aural service at Ridgway (priority 3).⁷ See Llano and

⁵ The distance between Rangely and IBC's specified site at Ridgway is 226.5 kilometers (140 miles) whereas a minimum distance of 245 kilometers (152 miles) is required between Class C1 co-channels.

⁶ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (Co-equal weight is given to priorities (2) and (3).)

⁷ IBC reports that Silverton would not be left without service, as an authorization has been issued for a new FM broadcast station to operate on Channel 297C1 at Silverton. However, that channel was reallocated to Bayfield, Colorado, as that community's first local aural transmission service in MM Docket No. 99-76, and the authorization of Voice Ministries of Farmington, Inc. (File No. BPH-951020MA) was modified accordingly. See, Silverton and Bayfield, Colorado, 14 FCC Rcd 21502 (1999).

Marble Falls, Texas, 12 FCC Rcd 6809 (1997), recon. den. 13 FCC Rcd 25039 (1998).

5. As stated in the Notice, Channel 279C1 was proposed for allotment to Rangely utilizing center city reference coordinates 40-05-06 NL and 108-48-18 WL, whereas IBC's suggested resolution to accommodate both proposals suggests a site restriction 26.3 kilometers (16.3 miles) north of Rangely. However, it is the Commission's policy to propose a new allotment with the least theoretical site restriction necessary where an allotment will be open to applications. See Vacaville, California, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991). Therefore, we will not alter the reference coordinates set forth in the Notice for proposed Channel 279C1 at Rangely. Our determination is further supported by a staff engineering analysis which reveals that Channel 279C1 may be allotted to Ridgway at an alternate site located 12.2 kilometers (7.6 miles) southeast of the community, in conformity with the technical requirements of the Commission's Rules, which is a less severe site restriction than the one proposed for Rangely.⁸ Use of the alternate site at Ridgway will accommodate each proposal under consideration herein and is consistent with Commission precedent. See Greenville, Texas, 6 FCC Rcd 6048 (1991), and cases cited therein. Moreover, as the Ridgway proposal requires a transmitter relocation in any event to accommodate the reallocation of Channel 279C1 to that community, use of the alternate site should not unduly burden IBC, and is in accord with prior Commission decisions. See Rockport, Gregory, Alice and Armstrong, Texas, 4 FCC Rcd 8075 (1989).

6. In view of the interest expressed in providing a first local aural transmission service to Rangely, Colorado, we will allot Channel 279C1 to that community as requested. Additionally, we believe the public interest would also be served by substituting Channel 279C1 for Channel 279C2 at Silverton, reallocating Channel 279C1 to Ridgway, and modifying the authorization for Station KBNG accordingly. This will result in a first local service to Ridgway and enable Station KBNG to expand its coverage area. We are also allotting Channel 238A to Silverton, Colorado, as a replacement channel. We recognize that a removal of a sole local service from Silverton is not obviated by the allotment of a vacant channel. However, in this instance, Station KBNG is not on the air, and in any event, it has stated its intent to apply for the Class A replacement channel in Silverton.⁹

7. As stated in the Notice, Channel 279C1 can be allotted to Rangely consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without a site restriction, at coordinates 40-05-06 NL and 108-48-18 WL. Also, Channel 279C1 can be

⁸ IBC advises that its requested site is presently in use as a radio tower site located on Spruce Mountain. However, our selection of an alternate site for Channel 279C1 at Ridgway does not necessarily bar IBC from proposing a different site in its application for proposed Channel 279C1 at Ridgway. See Melbourne, Florida, 5 FCC Rcd 1031 (1990).

⁹ In view of IBC commitment to apply for Channel 238A at Silverton, in the event multiple applications are received, Channel 257A is also available for allotment to that community. Therefore, in consideration of the public interest benefits of having a first local service in Ridgway in addition to a new allotment in Silverton, we will entertain a petition for rule making for the additional Class A channel at Silverton if a competing application is filed for this allotment. See Albion, Nebraska, 10 FCC Rcd 11927 (1995).

allotted to Ridgway at a restricted site located 12.2 kilometers (7.6 miles) southeast of the community at coordinates 38-03-18 NL and 107-41-40 WL. Additionally, Channel 238A can be allotted to Silverton without a site restriction, at coordinates 37-48-42 NL and 107-40-00 WL.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 16, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Rangely, Colorado	279C1
Ridgway, Colorado	279C1
Silverton, Colorado	238A

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Commission's Rules, the authorization issued to Idaho Broadcasting Consortium, Inc. for Station KBNG (File No. BPH-19971126MD) IS MODIFIED to specify operation on Channel 279C1 at Ridgway, Colorado, in lieu of Channel 279C2 at Silverton, Colorado, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and,
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m) of the Commission's Rules, any party seeking a change in community of license or a television or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Idaho Broadcasting Consortium, Inc., permittee of Station KBNG, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license at Ridgway, Colorado.

11. Filing windows for Channel 279C1 at Rangely, Colorado and Channel 238A at Silverton, Colorado, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent Order.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning the above, contact the Allocations Branch, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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